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ACTION ARA-14

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E.O. 11652: N/A
TAGS: PINS, SHUM, AR
SUBJECT: ADMINISTRATION OF THE RIGHT OF OPTION

REF: BUENOS AIRES 6593

SUMMARY: GOA ANNOUNCED TODAY AS EXPECTED THE RESTORATION OF THE PROVISION OF ARTICLE 23 OF THE ARGENTINE CONSTITUTION WHICH GRANTS A RIGHT OF OPTION TO THOSE PERSONS HELD UNDER STATE OF SIEGE DETENTION TO LEAVE THE COUNTRY. THE GOVERNMENT ISSUED DETAILED LEGAL PROVISIONS GOVERNING THE EXERCISE OF THE RIGHT OF OPTION WHICH INSURES THAT NO EXECUTIVE DETAINEE WILL BE PERMITTED TO LEAVE THE COUNTRY WHO MIGHT ENDANGER THE NATION'S PEACE AND SECURITY. IN ADDITION, POWERS WERE GRANTED TO PROVIDE GREATER FLEXIBILITY IN THE PRESIDENT'S ADMINISTRATION OF THE EXECUTIVE DETENTION STATE OF SIEGE POWERS. END SUMMARY.

1. ADMINISTRATION OF THE RIGHT OF OPTION
UNDER THE RIGHT OF OPTION ADMINISTRATION STATUTE (LEY 21650) AND 2 IMPLEMENTING EXECUTIVE ORDERS, THE CONSTITUTIONAL RIGHT OF OPTION IS RESTORED UNDER A COMPLICATED SYSTEM OF ADMINISTRATIVE PROCEDURES WHICH APPEAR UNPRECEDENTED

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IN ARGENTINE CONSTITUTIONAL HISTORY. THE LAW AND EXECUTIVE

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ARGENTINA PROJECT (S200000044)
U.S. DEPT. OF STATE, A/RPS/IPS
Margaret P. Grafeld, Director
Exemption(s):
(X) Release () Excise () Deny
Declassify: () In Part (X) In Full Declassify on: [REDACTED]
() Classify as () Extend as () Downgrade to
Date Declassify on Reason

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ORDERS WILL RESULT IN A RIGHT OF OPTION SYSTEM WHICH WILL BE ADMINISTERED AS FOLLOWS:

- (A) PERSONS HELD AT THE DISPOSITION OF THE EXECUTIVE POWER MAY 90 DAYS AFTER THE PRESIDENTIAL DECREE ORDERING THEIR DETENTION SUBMIT A PETITION TO LEAVE THE COUNTRY TO THE MINISTRY OF INTERIOR.
- (B) THE APPLICATION MUST INDICATE THE COUNTRY OF DESTINATION AND BE SUPPORTED BY A CERTIFICATE ISSUED BY THE EMBASSY OF THE COUNTRY.
- (C) THE PRESIDENT WILL DECIDE ON ALL VALID PETITIONS WITHIN 120 DAYS OF THEIR RECEIPT IN THE MINISTRY OF THE INTERIOR.
- (D) THE PRESIDENT WILL DENY THE RIGHT OF OPTION WHEN IN HIS JUDGEMENT, RELEASING THE EXECUTIVE DETAINEE COULD PLACE THE PEACE AND SECURITY OF THE STATE IN JEOPARDY.
- (E) TO ADVISE THE PRESIDENT ON THESE DECISIONS, A SPECIAL COMMITTEE IS ESTABLISHED HEADED BY THE MINISTER OF THE INTERIOR AND COMPOSED OF SENIOR REPRESENTATIVES OF EACH OF THE ARMED FORCES, THE UNDERSECRETARIES OF THE INTERIOR AND JUSTICE MINISTRIES AND THE UNDERSECRETARY OF THE NATIONAL INTELLIGENCE SERVICE.
- (F) IF THE PETITION IS APPROVED, THE DETAINEE WILL BE ALLOWED TO DEPART FOR THE RECEIVING COUNTRY.
- (G) IN THOSE CASES IN WHICH THE PETITION IS DENIED, THE DETAINEE MAY SUBMIT ANOTHER PETITION 6 MONTHS AFTER THE DENIAL OF THE PREVIOUS PETITION.

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(H) IN ANY CASE WHERE THE PRESIDENT HAS NOT ACTED ON A VALID PETITION WITHIN THE 120-DAY PERIOD THE DETAINEE MAY SEEK JUDICIAL RELIEF FOR DEALY UNDER ARTICLE 28 OF LAW 19,549 (AMPARA POR MORA DE LA ADMINISTRACION).

(I) PETITIONS WHICH HAVE BEEN PRESENTED PREVIOUSLY UNDER LAW 21,449 (OCTOBER 27, 1976) WHICH REPLACED THE SUSPENDED CONSTITUTIONAL RIGHT OF OPTION PROVISIONS WILL BE DECIDED UNDER THE NEW PROCEDURES.

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2. MORE FLEXIBLE DETENTION PROCEDURES WERE ALSO ESTABLISHED BY EXECUTIVE ORDER. THE JUNTA ESTABLISHED FOUR CONDITIONS FOR EXECUTIVE DETENTION:

- (A) PERSONS MAY BE HELD IN FEDERAL OR LOCAL PENAL FACILITIES.
- (B) PERSONS MAY BE HELD IN MILITARY OR SECURITY ESTABLISHMENTS.
- (C) PERSONS MAY BE HELD IN A LIMITED FREEDOM STATUS (LIBERTAD VIGILADA) IN WHICH A DETAINEE WOULD BE ALLOWED FREEDOM OF MOVEMENT WITHIN A LIMITED GEOGRAPHIC AREA. THE DETAINEE MUST REPORT TO A SUPERVISING OFFICER EVERY THREE DAYS FOR THE FIRST TWO MONTHS AND EVERY SEVEN DAYS THEREAFTER. PARTICIPATION IS PROHIBITED IN ANY TYPE OF NON-FAMILIAL MEETING.
- (D) PERSONS MAY BE HELD UNDER HOUSE ARREST. THEY CANNOT LEAVE THEIR RESIDENCE AND CANNOT HOLD ANY NON-FAMILIAL MEETINGS.

3. INITIAL REACTIONS.

THE EMBASSY HAS ALREADY RECEIVED A NUMBER OF CALLS FROM FAMILIES ASSOCIATED WITH HIGH U.S. INTEREST CASES. THE FAMILIES ARE VERY ENCOURAGED AND HAVE REQUESTED GUIDANCE FROM THE EMBASSY WITH RESPECT TO OBTAINING A CERTIFICATE THAT THEIR DETAINED RELATIVE WILL BE ALLOWED ENTRY INTO THE U.S.

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HUMAN RIGHTS GROUPS HAVE BEEN EXPECTING RESTORATION FOR SOME MONTHS AND ARE NONCOMMITTAL UNTIL THEY LEARN HOW IN FACT THE PROGRAM WILL BE ADMINISTERED. HUMAN RIGHTS ATTORNEYS POINT OUT THAT THE NEW LAW AND EXECUTIVE ORDERS ARE AN ABRIDGEMENT OF THE RIGHT OF OPTION WHICH HAS REMAINED UNFETTERED SINCE ITS ESTABLISHMENT IN 1853. THESE REGULATIONS WILL BE SUBJECT TO CHALLENGE BEFORE THE JUNTA APPOINTED SUPREME COURT.

IN SUMMARY, ALTHOUGH THE EFFECT ON THE PERSONS PRESENTLY HELD UNDER EXECUTIVE DETENTION IS UNKNOWN, THE GOVERNMENT'S ACTION IS VERY ENCOURAGING TO THE FAMILIES OF THE DETAINEES AND IS CERTAINLY VIEWED AS A SIGNIFICANT AND POSITIVE STEP BY THE ARGENTINE PUBLIC.
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